

DOCKET NO.: BMS-2204 (DM-6950)  
Application No.: 10/033,769  
Office Action Dated: May 17, 2005

PATENT  
REPLY FILED UNDER EXPEDITED  
PROCEDURE PURSUANT TO  
37 CFR § 1.116

### REMARKS

Applicant requests reconsideration of the finality of the rejection of the last Office action. The finality of this Office action should be withdrawn because the Examiner has introduced a rejection that was not necessitated by Applicant's amendment of the claims in the previous response. MPEP §706.07(a) states:

Under present practice, second or any subsequent actions on the merits **shall be final, except** where the examiner introduces a new ground of rejection that is **neither necessitated by applicant's amendment of the claims** nor based on information submitted in an information disclosure statement ...

(emphasis added). The Office has introduced one new rejection - a 102(b) rejection against claim 87 based on the Angus reference. However, this rejection was not necessitated by Applicant's amendment. If anything, the rejection should have been *prevented* by Applicant's amendment, as is explained below in more detail. In view of the foregoing, **Applicants respectfully request that the finality of the Office action be withdrawn**, pursuant to MPEP §706.07(d).

Claims 1, 3-9, 15, 17-22, 27, 39, and 66-86 are indicated as allowed in the Office Action Summary.

Claim 87 was rejected under 35 USC §102(b) over the Angus reference, the Office Action stating:

Angus et al disclose a compound, 2-(aminomethyl)-2-methyl-1,3-propanediamine  $\text{H}_3\text{CC}[\text{CH}_2\text{NH}_2]_3$ , that encompasses Applicant's claims when  $\text{A}=\text{CR}_1$ ;  $\text{R}_1$  = methyl (C1 alkyl);  $\text{R}_{17}$  = H;  $\text{R}_{18}$  = H;  $k=1$ ; and  $m=3$ .

Applicant respectfully traverses the rejection, as claim 87 clearly states "**with the proviso that when A is H-Si, k is other than 0, and when A is  $\text{CH}_3\text{-C}$  and k is 1 and  $\text{R}_{17}$  is H,  $\text{R}_{18}$  is other than H.**" Thus, *at the time that the rejection was applied*, there was already a *proviso*

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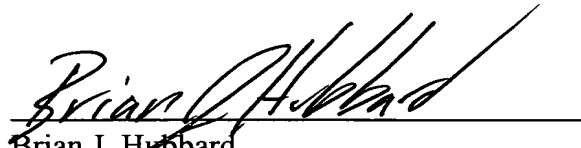
in place that prevented the reference from reading on the claim. Applicant believes that the anticipation rejection was clearly in error, and that it should be withdrawn.

Moreover, because at the time that the rejection was applied, there was *already* a *proviso* in place that prevented the reference from reading on the claim, *the rejection was not necessitated by Applicant's amendment of the claims*. Thus, Applicant believes it is proper to withdraw the finality of the rejection.

If the Examiner has any questions, she is invited to call the undersigned.

Date:

Aug 17, 2005

  
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